

05-CV-00416-ORD

MAGISTRATE JUDGE MONICA J. BENTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GUADALUPE SERRANO-HERNANDEZ,

Defendant.

NO. 05-544M

(District Court No. CR05-0416RSL)

~~(PROPOSED)~~ ORDER GRANTING
STIPULATED MOTION TO EXTEND
TIME TO FILE INDICTMENT

THIS MATTER having come before the Court on the stipulated motion of the parties for an order extending the time within which an indictment shall be filed, and the Court having considered the stipulated motion of the parties, together with the balance of the records and files herein, the Court now finds and rules as follows:

On November 16, 2005, defendant was arrested and a complaint was filed. The defendant made his initial appearance before the Magistrate Judge in the Western District of Washington on that same date.

The parties are seeking an order continuing the time within which an indictment must be filed from December 16, 2005, to January 16, 2006, on the grounds that the ends of justice served by a continuance outweigh the best interest of the public and the defendant in a speedy

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(GUADALUPE SERRANO-HERNANDEZ)-05-544M-

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FEDERAL PUBLIC DEFENDER
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1 indictment. Specifically, the failure to grant a continuance will likely result in a miscarriage
2 of justice, pursuant to 18 U.S.C. § 3161(8)(B)(i), and would unreasonably deny the defendant
3 the reasonable time necessary for effective preparation, taking into account the exercise of due
4 diligence, pursuant to 18 U.S.C. § 3161(8)(B)(iv).

5 In support of this ruling, the Court makes the following findings:

6 1. Pursuant to the United States Attorney's "fast track" plea policy in illegal reentry
7 cases, it offered the defendant a plea to a misdemeanor count and a two-year felony count for
8 reentry in violation of Title 8, U.S.C. § 1325. Upon further investigation, it was determined
9 that such a resolution was not feasible since the first entry alleged by the government took
10 place in 1979, when Mr. Serrano-Hernandez was only 12 years old.

11 2. The government's response to this problem was to offer a plea to a more serious
12 felony count of illegal reentry as an aggravated felon which carries a twenty-year maximum
13 penalty. While the government also agreed to offer the defendant a thirty-month cap by
14 agreeing that the plea could be entered under Rule 11(c)(1)(C), which would allow the
15 defendant to withdraw his plea if the Court determined it would impose a higher sentence, the
16 defendant wishes to conduct a complete and thorough investigation of his possible defenses
17 before making a final decision on the government's revised plea offer.

18 3. Because it is the government's policy that its "fast track" plea offers expire once
19 an indictment is returned, the defendant is requesting a thirty-day extension of time for filing
20 of the indictment, so that his investigation can be completed before having to make his
21 decision and respond to the government's offer.

22 4. The defendant has specifically identified two areas of investigation that need to be
23 completed. A complete review of his immigration or "A" file, and an investigation of the
24 circumstances surrounding his arrest.

25 5. The Court further finds that the parties have acted with due diligence in this case.

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1 Therefore, it appearing to the Court that the failure to extend the date within which an
2 indictment must be filed would likely result in a miscarriage of justice, pursuant to 18 U.S.C.
3 § 3161(8)(B)(1), and would unreasonably deny the defendant the reasonable time for effective
4 preparation, taking into account the exercise of due diligence, pursuant to 18 U.S.C.
5 § 3161(8)(B)(iv), and it further appearing to the Court that the ends of justice served by
6 granting the request of continuance outweigh the interest of the public and the defendant in a
7 speedy trial,

8 IT IS HEREBY ORDERED that the stipulated motion of the parties to extend the time
9 within which an indictment shall be filed is GRANTED;

10 IT IS FURTHER ORDERED that the time within which an indictment shall be filed is
11 hereby extended from December 16, 2005, to January 16, 2006;

12 IT IS FURTHER ORDERED that the period of delay from December 16, 2005 until
13 January 16, 2006, is excludable time, pursuant to 18 U.S.C. § 3161(h)(8)(A), for the purpose
14 of computing the time limitations imposed by the Speedy Trial Act, 18 U.S.C. §§ 3161-3174.

15 DATED this 15th day of December, 2005.

16 
17 HONORABLE MONICA J. BENTON
18 UNITED STATES MAGISTRATE JUDGE

19 Presented by:

20 s/ Michael Filipovic
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23 Attorney for Guadalupe Serrano-Hernandez
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